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VOL. 35 DECEMBER, 1959 No. 2

The President's Page

Occasionally Lawyers Should Assume the Role of Judges and Vice Versa

HUGH W. DARLING

"Why was that case ever filed?" is a question frequently posed by laymen as well as lawyers and probably by a few judges. Not infrequently a valid answer is lacking. A good deal of the litigation flooding the courts throughout the land should have died a-borning.

From a practical standpoint only lawyers can stop a bad lawsuit before it is started. To do this the lawyer must slip on judicial robes because what he is doing is judging the case and ruling for the defendant. And this is precisely what every lawyer should do when he is consulted with respect to a potential lawsuit. Indeed, a failure to do so could place him in violation of his oath not to maintain any action that appears not to be legal or just.

But since lawyers are advocates, not judges, it would seem fair and fitting that he follow the judicial approach and reject the advocate's approach only when he concludes as a "judge" that the case unquestionably is lacking in merit and clearly is unworthy of being litigated. No aggrieved person should be denied his day in court if there be any reasonable and legal basis for redress, even though that basis may seem somewhat tenuous to the advocate turned judge.

Occasions occur on the other side of the dock when a judge

ought to doff his robe and don the coif. The shift, however, should be made with caution and only when justice requires.

An attorney who has prepared a case for trial, offense or defense, knows where he is going and how he wants to get there. A judge who thinks he can do better than the lawyer examining a witness can derail a case surprisingly fast and it may take a good deal of doing before the lawyer can get it back on the tracks. When a witness is on cross-examination, particularly if he be devious or slippery, an untimely switch in investments can do more than derail a case. The cross-examiner may be leading the witness into a cul-de-sac where he can hammer the truth out of him, or make it clear that he is offending his oath. If a judge needlessly intrudes, the witness might escape—followed by an unjust judgment.

Still there are many instances when it would be wrong for a judge not to cross the line. If a point be not clear in the judge's mind, he should see to it that it is made clear and, if necessary,

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AN ANALYSIS OF THE LABOR-MANAGEMENT ACT OF 1959

By ROBERT FEINERMAN*

INTRODUCTION

The Labor-Management Reporting and Disclosure Act of 1959,[1] commonly called the "Labor Reform Bill," was signed into law by the President on September 14th, 1959. The statute enacted is the first major legislation affecting labor-management relations since passage of the Taft-Hartley Act in 1947. The new law, stemming to a great extent from the public reaction to the disclosures of the McClellan Committee of wrongdoing on the part of certain unions and their officers, deals primarily with a sweeping set of controls affecting the internal affairs of unions and their relationships with union members. In addition thereto, Congress made a number of extensive revisions in the Taft-Hartley Act. From a union standpoint, organizational and recognitional picketing are severely limited and controlled, and existing restrictions on secondary boycotts and hot cargo contracts are tightened. From an employer standpoint, the new law prohibits expenditures to buy off organizers and employees, and requires the employer to report expenditures intended to influence or affect employees in the exercise of their organizing or bargaining rights. Labor relations consultants, as well as employers, are brought under the reporting requirements of the new Act. Changes affecting the jurisdiction of the National Labor Relations Board are included in the new legislation and the "no-man's-land" that has existed in the field of labor law since the United States Supreme Court decision in the Guss[2] case is eliminated. Voting rights of economic strikers, priority handling of discrimination cases, union security in the construction industry and delegation of election authority to regional directors of the NLRB, are all covered in Title VII of the new Act.

It is important to note that the new law has different effective dates for its various provisions. For example, Title I, the Bill of

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[1]Public Law 86-257.

Rights for Union Members, became effective on September 14th, 1959; Title II, Reports Required on Existing Union Trusteeships, became effective on October 14th, 1959; Title VII, Amendments to the Taft-Hartley Act, became effective on November 13th, 1959; Title II, Reports Required of Unions on Administrative Policies, Constitutions and By-Laws, has a December 13th, 1959 effective date.

BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

Title I contains a Bill of Rights for Union Members as against internal violation. Other rights are granted to union members in other titles which deal with the rights of employees generally and are not limited in their coverage solely to union members. The Bill of Rights in Title I covers the following:

1. Equal rights among members to nominate candidates, to vote in elections, and attend membership meetings, subject to reasonable rules and regulations in the union's constitution and by-laws.
2. Freedom of speech and assembly with respect to union meetings, business discussions, and comments upon candidates, subject to reasonable union rules and regulations.
3. Dues, initiation fees, and assessments by majority vote of members in a secret ballot with the right to notice of intention to vote upon such questions.
4. Protection of the right to sue the union, its officers, and others.
5. Safeguards against disciplinary action by the union, except for nonpayment of dues, unless served with written specific charges, given reasonable time to prepare a defense, and afforded a full and fair hearing.

REPORTING BY LABOR ORGANIZATIONS

Title II requires labor organizations to adopt constitutions and by-laws and to file signed copies of same, together with the union's operating rules, with the Secretary of Labor. In addition, labor organizations must file annual reports disclosing their financial condition and operations. All reports filed become public information.

Reports by Union Officers and Employees

Title II requires officers and employees of labor organizations to file annually a statement disclosing transactions that "create or may create a conflict of interest." These reports are designed to

[2] *Guss vs. Utah Labor Relations Board*, 352 U.S. 817.

disclose personal financial interests which conflict with duties owed to the union membership and to prevent loans, under-the-table payments, special discounts, and other personal allowances which might influence a union official in his organizational or negotiating obligations.

Reports by Employers

Title II requires employers to file annual reports disclosing any payments (other than wages) to a labor union, its officers, and agents, and disclosing expenditures designed to influence or affect employees in the exercise of their right to collective bargaining. Reports are also required of any expenditures by an employer that have as objects, either directly or indirectly, the securing of information concerning the activities of employees or a union in connection with a labor dispute. However, the labor dispute must involve the employer. It would appear that money paid out by an employer to gain information with reference to union activities and contracts with other employers is not subject to the reporting requirements. Reports also are not required where the employer tries to obtain information "for use solely in conjunction with an administrative or arbitral proceeding, or a criminal or civil judicial proceeding." This exemption has been severely criticized by the AFL-CIO because it is not specifically limited to legitimate expenditures connected with a judicial or administrative proceeding.

Reports by Labor Relations Consultants and Reports by Employers About Labor Relations Consultants

Section 203(a) of Title II requires employers to report any agreements or arrangements (including the amount of payment) with any outside labor relations consultants whereby such outsider undertakes activities with the object, either directly or indirectly, of either persuading employees as to the exercise of their organizing or bargaining rights, or supplying the employer with information concerning the activities of employees or a union in a labor dispute (except for information collected for a legal proceeding as per the statutory exemption). Section 203(b) requires a similar report to be filed by the labor relations consultant or "middle man" who agrees to act on behalf of the employer. The provisions of this sub-section have been enacted as a double-check on the employer arrangements with "middle men," and to implement the report of the McClellan Committee which found that certain employers have utilized certain labor relations consultants

to organize "no-union" committees and to engage in other activities to prevent union organization.

Exclusions:

1. Employees of the employer are excluded from the provisions of the above section.

2. Employers, consultants, and attorneys are not required to file reports where the attorney or consultant has been retained for any of the following purposes:

(a) Giving advice to the employer.

(b) Representing the employer in legal or arbitration proceedings.

(c) Negotiating collective bargaining contracts on behalf of the employer.

There is an additional statutory provision that attorneys are exempted from including in reports to be filed by them any information which is lawfully communicated to them in the course of a legitimate attorney-client relationship.

A number of open questions in this area will have to be resolved. For example, the line between "giving advice" to an employer, which does not require the filing of a report, and the type of activities requiring the filing of a report, is a hard one to draw. By reason of the fact that the criminal provisions of Section 302 of the Taft-Hartley Act, as amended, apply to the reporting provisions of the new law, a failure to file a report by an employer or labor relations consultant when such report must be filed, subjects the parties to possible criminal prosecution. Caveat Consultant! Query: Can a labor relations consultant rely upon the privilege against self-incrimination in refusing to comply with the reporting requirements of the new act?

Trusteeships

Title III requires reports to be made to the Secretary of Labor by national and international unions regarding trusteeships over local unions within thirty days after a trusteeship is imposed, permits trusteeships to be established and maintained only as provided in union constitutions and by-laws, and provides that trusteeships are presumed to be valid only for eighteen months after they are imposed.

Union Elections

Title IV sets up requirements for elections of officers in national, international, and local unions. Procedures are established to in-

OFFICERS GREET LUNCHEON SPEAKER

President Hugh W. Darling (right) and Junior Vice President A. Stevens Halsted (left) greet Professor Archibald Cox of Harvard Law School at the Asssociation's November 19 luncheon meeting. Professor Cox discussed the new Federal Labor Law, which is also the subject of this month's Bulletin feature article.

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sure secret ballots among members and adequate notice of all elections. Procedures are also established for the removal of union officers guilty of serious misconduct.

Safeguards for Labor Organization

Title V imposes direct regulations on union officers. It establishes a fiduciary responsibility for the officers and agents of labor organizations and makes the embezzlement of union funds a federal offense. When the government refuses or fails to act, filing of a civil action by a union member is authorized. The new law requires the bonding of union officials who handle union funds and prohibits a union official from borrowing union funds in excess of $2,000.00. Communists and ex-convicts are barred from holding union office. The law also prohibits a union from paying, directly

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The View from the Ivory Tower

BUSINESSMAN'S RELIANCE

By ADDISON MUELLER*

A long range development in the field of contracts seems to be outgrowing adolescence without attracting as much attention as it may deserve. This development is the removal, both by decision and by statute, of the bonds of the consideration requirement in a variety of commercial "option" situations. The possible significance of the development lies in the fact that the generally accepted definition of consideration is that adopted by the American Law Institute in the Restatement of Contracts,[1] and that definition is framed in purely commercial terms of price demanded and received by a promisor for his promise. Hence the actual elimination of the consideration requirement in a standard type of commercial transaction might well evidence the beginnings of significant change in the basic philosophy of our system of commercial law.

There is, of course, nothing unusual about the enforcement of promises unsupported by the Restatement's bargained-for-equivalent kind of consideration. The Restatement itself—having set up the bargained-for-equivalent definition of the requirement—recognizes its limitations in a series of sections[2] designed to cover all types of considerationless but still enforceable promises. Most widely cited and hotly disputed of these sections is Section 90.[3] It was designed to cover the considerable accumulation of cases in which courts, in order to avoid "injustice," have used a vague and never well digested extension of the estoppel theory to enforce promises that were relied on despite the fact that the reliance could not reasonably be related to the promisor's request so as to meet the narrower consideration test.

In a great many of the cases in which the Section 90 doctrine is invoked to support a promise, the same result could have been reached by the consideration route. Courts have not always dis-

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[1]RESTATEMENT, CONTRACTS § 75 (1932).

[2]"id.," §§ 85-94.

[3]"§ 90. PROMISE REASONABLY INDUCING DEFINITE AND SUBSTANTIAL ACTION. A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

tinguished as nicely as they might between a reliance requested by the promisor as the price of his promise and an unrequested reliance.[4] Only in the latter case, of course, is a doctrine other than consideration needed to support the promise.

The pure action-in-reliance decisions have generally occurred in such cases as those involving charitable subscriptions and unfulfilled gift promises. Until fairly recently, in California as elsewhere, there seems to have been a reluctance to apply the doctrine to strictly commercial transactions. This may have been fostered by the feeling that businessmen's promises, by their very nature, need consideration in the pay-the-price sense if any promises do; it is a rare businessman who makes business deals for free.[5] Why, then, the recently spreading pattern of enforcement of "firm offer" promises, commercial to the core, despite the stated absence of such consideration to support the promise?

The enforcement pattern for such promises has been largely drawn thus far by statutes.[6] These statutes make promises to hold an offer open for a specified period, or for a reasonable time, enforceable without more. In substance, they all state that the assurance of irrevocability in a firm offer needs no consideration to be enforceable. In addition to the statutes, a beginning has been made in the cases to remove the non-commercial restriction from the action-in-reliance doctrine and use it to enforce considerationless firm offers as an exception to the consideration rule.[7] The Supreme Court of California has recently given significant impetus to this case law start. For in *Drennan* v. *Star Paving Company*,[8] involving a sub-contractor's bid to a general contractor which was used—and thus "relied upon"—by the general contractor in making up his own larger bid, the court held that the sub-contractor could not withdraw his bid before acceptance despite the absence of consideration.

If these firm-offer statutes and action-in-reliance cases do indeed repudiate the bargain requirement in commercial transactions as they say they do, they might well be considered as law shaking in their significance. If, on the other hand, and despite their protestations, they are steps along the road to a better understanding of the

[4]See 1 CORBIN, CONTRACTS §§ 202, 203 (1950).
[5]A classic example of this attitude is the opinion of Judge Learned Hand in *James Baird Co.* v. *Gimbel Brothers* (2 Cir., 1933) 64 F.2d 344.
[6]UNIFORM COMMERCIAL CODE § 2-205 (now adopted by the states of Penn., Ky., Conn., Mass., and N.H.); NEW YORK PERSONAL PROPERTY LAW (McKinney, 1956) § 33(5).
[7]*Northwestern Engineering Co.* v. *Ellerman*, 69 S.D. 397, 10 N.W.2d 879 (1943).
[8]*Drennan* v. *Star Paving Company*, 51 C.2d 409, 333 P.2d 7575 (1958).

broad basis of that rule—namely that serious and sensible business deals involve the exchange of commercial values and only such business deals should be enforced—they support rather than weaken the commercial consideration requirement. In other words, only if the consideration requirement is thought of as demanding the presence of the simple and easily identified exchange type bargain of earlier days do the firm-offer statutes and cases repudiate its essentiality. If less measurable, but no less valuable, equivalents are considered to be eligible for identification as bargained-for values, the firm offer statutes and cases would seem to recognize and re-affirm the importance of consideration in their results even though denying its importance in their language. For they all deal with situations in which a reliance is not only expected but desired by an offeror, and the resulting situation is of commercial value to him.

Why does an offeror agree to hold his offer open for a stated period so as to give his potential customer a chance to make up his mind? Why does a sub-contractor submit a bid to a general contractor, knowing that he will be expected to stand by his bid

until a reasonable time after the job is let to the general contractor? To a businessman, the answer is clear. For the businessman understands that commercial sellers, even in a seller's market when goods are scarce and buyers plentiful, seek and cherish customers and bait their hooks with every possible variety of lures to attract their favorable attention. One such traditional lure is the reassurance of the firm offer—the grant of needed time to think it over. To say that a would-be seller who has such a bait taken seriously and thus achieves the commercial benefit he sought has nonetheless not received "consideration" is to fly in the face of commercial reality.

It can be objected that a more broadly defined bargained-for-equivalent adds uncertainties to a law already too uncertain. But there is as much certainty here as the law needs. It should not be difficult for courts to recognize these less tangible forms of sought-after commercial benefit when they are so obvious to businessmen sellers and buyers alike. The very fact that statutes recognizing the enforceability of firm offers are being passed, and that a decision like that in the *Drennan* case is handed down, indicates that such benefit is being recognized by the law. For even as the presence of consideration in such situations is being denied, the value of the underlying commercial benefit to the promisor who is being held to his firm offer would appear to be at least partly responsible for the result.

The consideration doctrine states in convenient shorthand the idea that business promises are suspect unless given for commercial value. As such it is a valuable doctrine and should be preserved. There is, however, little reason why rigid notions of what constitutes such commercial value cannot be relaxed; such relaxation would better express its spirit without either violating its letter or impairing its value as a test. Passing statues "abolishing" consideration as a requirement in such commercial situations as firm offers, or invoking an action-in-reliance doctrine created to rationalize the enforcement of gift promises and charitable subscriptions in order to deny revocability to commercial offers, only confuses the issue.

However stated, the influence of results enforcing firm-offers may be hastening the approach of a period of more penetrating analysis of the benefit factors involved in commercial deals and more critical appraisal of commercial equivalents. Such a consequence would materially help to fashion a body of commercial law better attuned to the needs of current commercial life.

Notes From Your Law Library —

KNOW THY SHELVES!

By JOHN W. HECKEL*

ATTORNEYS: *The Attorney in Eighteenth-Century England* by Robert Robson (Cambridge, University Press, 1959, 182 p.) traces the historical and social development of the Legal Profession in England during the period when title "attorney" was replaced in favor of the term "Solicitor." Manuscript and archival sources.

BIOGRAPHY: Life in the courts of England over 45 years is presented in Arthur Smith's story of *Lord Goddard, My Years with the Lord Chief Justice* (London, Weidenfeld, 1959, 208 p.) The Fuchs case, the Chalk Pit Murder, and the Laski libel case are a few of the trials recounted.

CONSTITUTIONAL LAW: Lewis Mayers propounds the question *Shall We Amend the Fifth Amendment?* (New York, Harpers, 1959, 341 p.) and answers it with a comprehensive but untechnical discussion of the privilege against self-incrimination and its use in varied situations today; grand jury, legislative inquiries, police, and in court.

ESTATE PLANNING: Walter E. Barton is the author of *Estate Planning Under the 1954 Code.* (Chicago, Callaghan, 1959, 470 p.) He presents a conservative view of the planning which should go into estates to avoid litigation.

FEDERAL COURTS: *Behind the Judicial Curtain* is the autobiographical account by a federal district court judge in New York, Clarence G. Galston of his career and some of the cases he has handled. (Chicago, Barrington House, 1959, 159 p.)

FEDERAL PROCEDURE: The long awaited Volume 1 of Moore's *Federal Practice,* 2d ed. (Albany, Matthew Bender, 1959) has at last been published. This volume serves as an introduction to the others, which annotate the *Federal Rules of Civil Procedure.* It covers the history of the judicial system and jurisdiction, discussing such questions as: is there a federal common law?, judicial administration under Erie v. Tompkins, and the effect of

*Head Reference Librarian, Los Angeles County Law Library.

prior decisions and judgments. The volume closes with a discussion of the modernization of the federal procedure.

FREEDOM: *The Anatomy of Freedom* by Harold R. Medina (New York, Henry Holt, 1959, 178 p.) is a collection of the noted speeches of the judge, recast into essays on Harlan Fiske Stone, Woodrow Wilson and others who have influenced him.

MEDICINE: *The Physician and the Law* (New York, Appleton, 1959, 302 p.) by Rowland H. Long, is an expanded second edition of a simple text dealing with the legal problems confronting a physician. There are some case citations and other references.

RACE RELATIONS: Jack Greenberg is the author of *Race Relations and American Law* (New York, Columbia University Press, 1959, 481 p.) which is a study of the social impact of legal restrictions. Housing, marriage, education, travel, accommodations, elections, and criminal law are some of the areas covered. There is a bibliography and table of cases.

TRIAL TACTICS: Ben W. Palmer, long time, notable member of the Minneapolis Bar writes of *Courtroom Strategies* (New York, Prentice Hall, 1959, 393 p.) Written without citations or references, the author discusses the preparation and trial of cases in the first part, while the second is devoted to advice for the young attorney just starting practice.

TRIALS: *The Nan Patterson Case* by Newman Levy (New York, Simon and Schuster, 1959, 245 p.) is a recounting of the 1904 trial in which the author's father defended a showgirl on the charge of murdering her lover in a closed cab. The author has a plausible theory explaining the happenings.

WIRE TAPPING: *The Eavesdroppers,* by Samuel Dash and others (New Brunswick, Rutgers University Press, 1959, 484 p.) is the engrossing story of the tools, techniques, and law of wire tapping with emphasis on New York, New Orleans, Boston, San Francisco, Los Angeles, Philadelphia, Chicago and Las Vegas. The study was supported by the Pennsylvania Bar Association Endowment.

STATE PUBLICATIONS: The Final Report of the Subcommittee on Lending and Fiscal Agencies of the Assembly, March, 1959, 118 p., deals with Assembly Bill 500, which made amend-

ments in Retail Installment Sales of Consumer Goods and Services, Civil Code Sec. 1801 *et seq.* Final Report of the Joint Interim Committee on Assessment Practices to the California Legislature, May 1959, Sacramento, State Printing Office, 559 p., contains various reports on the assessment of property. The *Subdivision Manual,* published by the Senate, 1959, 116 p., treats economic aspects of subdividing, procedures, problems and design with a model subdivision ordinance included.

Federal Courts Criminal Indigent Defense Panel

The Los Angeles Bar Association expresses its gratitude to the following lawyers who served on the Federal Courts Criminal Indigent Defense Panel during September and October, 1959.

DeWitt Blase
Laurence K. Brown
Harvey E. Byron
Paul Caruso
James P. Del Guercio
Kenneth Downey
Edmund D. Edelman
Robert L. Finkel
Martin Gang
Robert Gilford
Jerome L. Goldberg
Russell J. Heinzelman
Sidney Irmas
Hiram Kwan
John L. Leary
Peter Lehman
Allan L. Leonard
Bruce G. McGregor
Hugh E. McColgan
Robert A. Memel
J. George Ohanneson
Robert A. Ortiz
Robert Priver
Francis M. Reiter
Harold Rostow
Wesley Russell
Milton Sidley
Charles D. Silverberg
Francis G. Stapleton
Emil Stranz
Barbara Warner
Robert Warren
Milton Wasserman
Alvin H. Weissman
John G. Wigmore

TAX REMINDER

TAX-FREE AND TAX-FAVORED BENEFITS TO EMPLOYEES

By JAMES H. KINDEL, JR.*

The benefits which an employer can provide to its employees and which are not taxable to the employees are becoming increasingly important because of the high rate of personal income taxes. Some of these benefits are specifically allowed by statute and others escape taxation because the benefit is considered to be relatively small.

At least one fringe benefit was used in the settlement of the recent Kaiser Steel strike. Kaiser agreed to pay the full cost of a medical benefit insurance plan. Part of the cost of the plan had previously been paid by the employees. Kaiser can deduct the full amount paid and no portion of the premium is taxable to the employees. The employees benefit not only by the amount of the premiums but also to the extent they would have had to pay income tax on the money used to pay the premiums.

Payments made by an employer pursuant to an accident or health plan are not compensation to the employees. Such contributions can be either under an insured plan or under an uninsured plan and this type of benefit can be given without regard to whether there is discrimination in favor of a certain employee or groups of employees. The plan can include an employee's spouse and children.

Premiums on group life insurance are deductible by the employer and are not taxable to the employee. Under some group insurance plans substantial amounts of insurance have been made available to the principal employee stockholders. Insurance of $200,000 or more has been provided for individual key employees. The amount of the insurance which can be made available is dependent upon the number of employees covered, the total amount of insurance, and numerous other factors. This practice may be curbed or limited to some extent by legislation or Treasury regulation. The State of New York has recently adopted rules regulating insurance companies which will restrict the issuance of such policies where the insurance companies concerned are chartered in New York. Canada

*Of the Los Angeles firm of Kindel and Anderson.

already has a limitation of $25,000 on such group insurance for any one employee.

Other types of fringe benefits escape taxation under a de minimus rule. For example, Christmas gifts of turkeys and other relatively small items to employees are not taxable to the employees although they are deductible by the employer. Entertainment expenses which are allowed to an employee frequently include benefits to the employee through the entertainment opportunities which he and sometimes members of his family are permitted to enjoy. The casual use of a company car has been held not to result in taxable income, but in other cases the use of a car has been held to result in taxable income to an employee where there was a substantial use. Other travel and entertainment expenses, such as club dues and the costs of traveling to conventions and on business trips are frequently important benefits for employees.

Many of these fringe benefits, and particularly travel and entertainment expenses, are subject to scrutiny by the Internal Revenue Service. In order that the item may be excludible from the employee's gross income it must have a proximate connection with the duties of the employee for his employer. The Internal Revenue Service has also ruled that wherever an item is partly business and partly pleasure that the amount of the benefit should be allocated and the personal portion will be treated as income to the employee.

An employer can adopt a wage continuation plan which will give an employee up to $100.00 per week for time absent from work because of accident or illness. This plan can be discriminatory in favor of certain employees if desired.

Profit sharing and pension plans give the employer an immediate deduction and the employee receives benefits which are favored under both income and estate tax rules. The income is postponed and it may be subject to tax only at capital gains rates. Furthermore, the interest of the employee in the plan is exempt from estate tax.

Restrictive stock options can give employees important capital gain opportunities.

Payments can be made to a widow of an employee of at least $5,000.00 which will be free of income tax to the employee and deductible by the employer. The courts have also consistently held that payments substantially in excess of this amount are deductible by the employer and gifts to the widow.

Brothers-In-Law

By George Harnagel, Jr.

GEORGE HARNAGEL, JR.

The last number of this Courageous Column had scarcely hit the streets when we began to receive Repercussions from our unmasking of the Seemingly Spurious Will of Herman Oberweiss. They ranged all the way from Distress and Disillusionment to Disbelief—not Disbelief in the Will, but in the Validity of our implicit Conclusion that the Will was Fanciful. While that View was based on Advices from Official Sources, we are glad—pending further Investigation—that we played it Quasi-Courageous by employment of the adverb "Seemingly." We shall publicly apologize to the heirs, executors, devisees, legatees and assigns of Herr Oberweiss if additional research discloses that we were in error and that they are (or were) *in esse*. Meanwhile we extend Christmas Greetings to our Readers, whether they be Disillusioned, Distressed or Otherweiss, and assure them that we do believe in Santa Claus, if not in Oberweiss.

* * *

When the Junior Bar Section of the **Illinois** State Bar Association sponsored an issue of *Illinois Bar Journal* last summer, the editors decided to liven up the cover with a cartoon. The cartoon depicts a mythical young associate in the firm of Parkhurst, Jones, Beeker, Adams, Sleekerton, Orr, Belchfire, Benson & Watson. He is sitting at his desk, from which he can see the firm name sprawled down two-thirds of an office door, and he is daydreaming of the rosy future when his name will not only lead all the rest but be printed in larger and blacker letters than those of his former employers. The editors gave this hopeful and fictitious young man the name of B. B. Beek because (so they assumed) it was equally fanciful. Imagine their surprise when they discovered that there is a B. B. Beek and (as they later reported) that he "is associated with the Los Angeles firm of O'Melveny & Myers." Based apparently upon their scrutiny of an O & M letterhead current a

few months ago, they amplified their report of this discovery as follows: "He is third from the bottom in a firm of *sixty*[1] lawyers."

We are informed, incidentally, that this letterhead has been revised—for reasons having nothing to do with the ambitions of either the real or the fanciful B. B. Beek—to eliminate all of the names that formerly were carried "below the line," while another version recently introduced, and reportedly reserved for matters of maximum importance, eliminates everybody but O & M.

* * *

Is This the Longest Judicial Sentence?

In *Fox Midwest Theatres v. Means,* 221 F.2d 173, at 181, you will find a single sentence containing 306 words, or 39 more than in the entire Gettysburg Address. Some of them are pretty fancy words, too. This syntactical labyrinth begins: "We hold that paragraph number 3, on its language and in its coordinate contextual position and relationship . . ."; twists tortuously through ". . . facially to be viewed as having had a meaningless significance

[1]That figure is far too low, but hardly anybody knows just what the right figure is. We consulted Jack O'Melveny, thinking he would know if anybody would. After consulting his secretary he cheerfully advised that he wasn't quite sure, but that to the best of *his* information the figure is around 80, including partners and associates but excluding "of counsel". As at 9:32 A.M., November 13, 1959, that is.

. . ."; and on to ". . . merely limitatively singling out a partial segment of appellees' general statutory rights . . ." Then it really gets started.

* * *

Since there's nothing like a honeymoon, why not keep it going as long as you live, as did the brilliant lawyer, Rufus Choate. When a friend once asked him, "Choate, if you were not who you are, who would you rather be?", without a moment's hesitation the lawyer answered, "Mrs. Choate's second husband."—*American Baptist.*

* * *

"The business of the law is not to promote quarrels but to conciliate the parties to them; not to create antagonisms or differences but to prevent them. Thus the lawyer is or should be a great conciliator—a man of peace—and yet he must resist aggressive demands and resist encroachments on the liberties of the person whether made by government or by organized majorities."—John S. Lord of the **Chicago** Bar—*Illinois Bar Journal.*

* * *

Commenting on the rather monotonous English style in legal documents, the *Law Society's Gazette* quotes by contrast the following letter by a lawyer in **India:**

"Dear Sir: Unless you pay the hundred rupees that you owe to Mr. X within seven days of this date, we shall take such steps as will cause you the utmost damned astonishment."

* * *

Did you ever notice that the smaller the idea the bigger the words needed to express it?—*Sunshine Magazine.*

* * *

The Law of the Land

"All women of whatever age, rank, profession, or degree, whether maid or widow, that shall from and after such Act impose upon, mislead, or betray into matrimony any of His Majesty's subjects by means of scent, paints, cosmetic washes, artificial teeth, false hair, Spanish wool, iron stays, hoops, high-heeled shoes, or bolstered hips, shall incur the penalty of the law now in force against witchcraft, and like misdemeanors, and the marriage upon conviction shall stand null and void." *From an Act of Parliament passed in 1700.*

THE PRESIDENT'S PAGE

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take over the examination of the witness, whether direct or cross. So, too, if the opposing lawyers are manifestly out of balance, one experienced and alert, the other inexperienced and drowsy, the judge should come to the aid of the weak. After all, the purpose of a lawsuit is to arrive at a just decision. A judgment for the plaintiff without benefit of supporting facts which reclines only on the ineptness of defense counsel trammels justice.

In most instances both sides are skillfully represented which means that both sides have been ably prepared. In those instances the judge should stay in his own pasture and let the lawyer try his case without disruptive intrusions from the other side of the fence. Happily, this is what most of our judges do.

AN ANALYSIS OF THE LABOR-MANAGEMENT ACT OF 1959

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or indirectly, the fines of any officer or employee convicted of willfully violating the statute.

Miscellaneous Provisions

Title VI covers a number of miscellaneous provisions, the most important of which are Section 602 which contains a prohibiton against picketing for the purposes of extorting money from an employer; Section 603 and 604 which provide that, except when explicitly provided to the contrary, nothing in the Act shall be construed to limit, reduce, impair, or diminish duties or authorities under other federal laws or under state laws; Section 608 requires a jury trial before punishment for criminal contempt committed outside the immediate presence of the court.

AMENDMENTS TO THE TAFT-HARTLEY ACT

Most of the Taft-Hartley amendments are in Title VII. Changes pertaining to employer payments to employee representatives appear in Title V in connection with the fiduciary duties of union personnel. Provisions as to union filing of financial reports and non-communist affidavits have been deleted from Title II.

Federal-State Jurisdiction

Section 14 of the Taft-Hartley Act has been amended to eliminate the "no-man's-land" in labor management relations where neither a state nor federal court or administrative agency is available to the disputing parties. This "no-man's-land" had resulted from a ruling of the United States Supreme Court in *Guss vs. Utah Labor Relations Board,* 352 U.S. 817, wherein the Court held that parties excluded from a hearing before the NLRB because of jurisdictional standards established for a particular industry by the Board may not bring their labor disputes before a state agency or state court. The rationale of this decision was the fact that Congress, having legislated in a wide area of labor management relations, had preempted the field. The new law authorizes the states to assume jurisdiction over interstate cases rejected by the NLRB under its jurisdictional standards in effect on August 1, 1959. At the same time, the amendment, Section 14(c), ratifies the discretion of the NLRB to decline jurisdiction over "any labor dispute involving any class or category of employees" and it may

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do so either by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act. The amendment further provides that the NLRB may delegate to the Regional Directors its powers in Representation cases.

A number of questions still remain to be answered under this important amendment. Query: (1) Does the state court apply federal or state law in ruling on matters within the coverage of the National Labor Relations Act but rejected by the NLRB under its jurisdictional standards? (2) Does a state court have to await a specific rejection of jurisdiction by the NLRB before it assumes jurisdiction over a dispute, or can it make the initial determination that a case falls outside the NLRB's jurisdictional standards? (3) Can a state tribunal take jurisdiction in a case where the NLRB has refused to issue an injunction after a preliminary investigation? The answer to this question would appear to be in the negative in view of the narrow jurisdiction given to state tribunals under the new amendment.

Economic Strikers

Section 9 (c) (3) has been amended to permit economic strikers to vote in Representation elections held within twelve months after commencement of a strike, subject to regulations to be issued by the NLRB. This is one of the few changes in the law which represents a gain for organized labor.

Organizational and Recognition Picketing

Section 8 (b) (7) has been added to the National Labor Relations Act to prohibit organizational or recognitional picketing where:

(1) The employer has lawfully recognized a labor organization as collective bargaining agent and no representation issue can be raised under the National Labor Relations Act, or

(2) A valid election has been held within twelve months, or

(3) An election petition has been filed by someone, either a picketing union, picketed employer, or a rival union, within a reasonable time (not to exceed thirty days) from the beginning of the picketing.

There is a further proviso that nothing in this subparagraph shall be construed to prohibit picketing or other publicity for the purpose of truthfully advising the public (including consumers) of the dispute unless the effect is to stop deliveries or performance of services by employees of other employers.

In considering Section 8 (b) (7) it should also be noted that

an amendment to Section 10 (1) provides that the NLRB's Regional Attorney shall not seek a temporary injunction against such picketing if the employer has been charged with unlawfully dominating a union and its investigation shows reasonable cause to believe that the charge is true.

Secondary Boycotts

Section 8 (b) (4) has been amended to strengthen the provisions against Secondary Boycotts and to close a number of loopholes. Coercement of neutral employees is no longer allowed, inducement of individual employees is barred, and inducement of the employees of railroads and government agencies is outlawed. Excepted from the prohibitions of this section is truthful publicity concerning products in the hands of a secondary employer and picketing at the site of the primary labor dispute. The union publicity exemption has two conditions attached:

(1) Picketing of neutral establishments is not allowed, and

(2) Publicity must not induce employees of neutral employers to refuse to pick up, deliver, or transport any goods, or to refuse to perform any services at the distributor's place of business.

Hot Cargo Agreements

Section 8 (e) has been added to the National Labor Relations Act to make it unlawful for employers and unions to enter into "hot cargo agreements." Such agreements are declared to be null and void even if entered into prior to the enactment of this statute. A "hot cargo" agreement is an agreement whereby an employer agrees not to handle the products of another employer, declared to be "unfair" by a union. The new law now makes it an unfair labor practice for a union and an employer to enter into an agreement whereby the employer stops handling, using, selling, transporting, or otherwise dealing in the products of any other employer, or stops doing business with any other person. The amendment does not apply to an agreement between the union and employer in the building and construction industry relating to contracting or sub-contracting work to be done at the site of construction, and also does not apply to agreements between unions and employers in the apparel and clothing industry pertaining to jobbers, manufacturers, contractors, or sub-contractors working

on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production.

Union Security - Construction Industry

Section 8 (f) authorizes an employer in the building and construction industry to negotiate a contract with the union before any employees are hired and to agree with such union that persons hired at a later job site shall become members of the union within seven days of their employment. In the absence of such a statutory exemption, an agreement of this type would constitute an unfair labor practice. It should be noted, however, that the amendment expressly provides that any state laws forbidding union security contracts are not over ridden by the new law. The amendment further provides that the new provision does not authorize the use of force, coercion, strikes or picketing to compel any person to enter into such prehire agreements.

Priority for Discrimination Cases

Sub-section 10 (m) provides that discrimination cases must be given a priority over all other cases in Board handling, subject only to the priority given under Section 10 (1) to cases involving organizational or recognition picketing, hot cargo contracts, and secondary boycotts.

CONCLUSION

The Labor Management Reporting and Disclosure Act of 1959 was passed by a Congress considered by labor representatives to be the most "liberal" Congress elected in many years. In view of this fact, the enactment of the "Labor Reform Bill" is an amazing testimonial to the power of public opinion. In the molding of public opinion, the importance of the televised McClellan hearings on racketeering in labor unions can not be overestimated. Public reaction to the exposures at these hearings was a vital factor in swinging many legislators from a "con" to a "pro" position on the proposed reform legislation. It is now law. What effect the new statute will have upon the dynamic area of labor-management relations is the big question to be answered in the future.

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